

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

WILLIAM H. KAHLOW,

Plaintiff,

v.

Case No. 07-C-0006

WISCONSIN & SOUTHERN RAILROAD CO.,
LAWRENCE BONACK,

Defendants.

**ORDER DENYING JOINT MOTION TO STRIKE
AND GRANTING MOTION FOR LEAVE TO FILE TARDY ANSWER**

Plaintiff, William H. Kahlow, filed this case on January 4, 2007. A certificate of service indicates that defendant Lawrence Bonack was served with the complaint and summons on January 12, 2007. On May 4, 2007, through counsel, Bonack filed a "Stipulated Motion to Strike the Answer, Cross-Claim and Counterclaim of Defendant Lawrence Bonack and for Leave to File Defendant Lawrence Bonack's Amended Answer and Affirmative Defenses."¹ In it, he states that initially he represented himself and on February 14, 2007, mailed his answer, affirmative defenses, cross-claim, and counterclaim against Wisconsin & Southern Railroad Co. (WSR) to Kahlow. However, the document was not filed with the court or served on WSR except as an attachment to the May 4, 2007, motion. Bonack says that recently he engaged WSR's counsel to represent him and asks that his prior answer, cross-claim, and counterclaim be stricken and that he be allowed to file the amended answer attached to the motion as Exhibit B. Kahlow has no objection and has stipulated to the request.

¹Due to a docketing error, the document had to be refiled on May 7, 2007.

Pursuant to Fed. R. Civ. P. 5(d), Bonack had to file his answer, cross-claim, and counterclaim with the court “within a reasonable time after service.” Yet, not until May 4, 2007, was the original answer, cross-claim and counterclaim filed with the court – and then only as an exhibit to a motion. Because the court finds that the May 4, 2007 filing did not occur within a reasonable time of service, and these documents were not of record when the motion was filed, there is nothing to strike.

Inasmuch as there is nothing to strike, there is nothing to amend. But the fact that the answer Bonack seeks to file is titled as an amended answer is of minor significance. The answer is tardy, Kahlow does not object to the late filing, Bonack is dropping the cross-claim as well as the counterclaim, and he has engaged WSR’s counsel, suggesting that WSR has no objection, either.

Therefore,

IT IS ORDERED that the joint motion to strike Bonack’s prior answer, cross-claim, and counterclaim is **denied** as moot, as there is no document to strike.

IT IS FURTHER ORDERED that the joint motion for leave to file the amended answer and affirmative defenses is **granted**. The clerk of court is directed to detach the document at Exhibit B to the motion, titled as an amended answer, and file it as Bonack’s answer in this case.

Dated at Milwaukee, Wisconsin, this 10th day of May, 2007.

BY THE COURT:

s/Charles N. Clevert, Jr.

C. N. CLEVERT, JR.

United States District Judge